



**BILLING CODE: 8070-01-P**

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Parts 1209, 1217, and 1250**

**RIN 2590-AA93**

**Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment**

**AGENCY:** Federal Housing Finance Agency

**ACTION:** Final rule.

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**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing this final rule amending its Rules of Practice and Procedure and other agency regulations to adjust each civil money penalty within its jurisdiction to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

**DATES:** *Effective date:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Stephen E. Hart, Deputy General Counsel, at (202) 649-3053, [Stephen.Hart@fhfa.gov](mailto:Stephen.Hart@fhfa.gov), or Frank R. Wright, Assistant General Counsel, at (202) 649-3087, [Frank.Wright@fhfa.gov](mailto:Frank.Wright@fhfa.gov) (not toll-free numbers); Federal Housing Finance Agency, 400 7<sup>th</sup> Street, SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is: (800) 877-8339 (TDD only).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

FHFA is an independent agency of the Federal government, and the financial safety and soundness regulator of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), as well as the Federal Home Loan Banks (collectively, the Banks) and the Office of Finance under authority granted by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act).<sup>1</sup> FHFA oversees the Enterprises and Banks (collectively, the regulated entities) and the Office of Finance to ensure that they operate in a safe and sound manner and maintain liquidity in the housing finance market in accordance with applicable laws, rules and regulations. To that end, FHFA is vested with broad supervisory discretion and specific civil administrative enforcement powers, similar to such authority granted by Congress to the Federal bank regulatory agencies.<sup>2</sup> Section 1376 of the Safety and Soundness Act (12 U.S.C. 4636) empowers FHFA to impose civil money penalties under specific conditions. FHFA's Rules of Practice and Procedure regulation (12 CFR part 1209) govern cease and desist proceedings, civil money penalty assessment proceedings, and other administrative adjudications.<sup>3</sup> FHFA's Flood Insurance regulation (12 CFR part 1250) governs flood insurance responsibilities as they pertain to the Enterprises.<sup>4</sup> FHFA's Implementation of the Program Fraud Civil Remedies Act of 1986 regulation (12 CFR part 1217) sets forth procedures for imposing civil penalties and assessments under the Program Fraud Civil

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<sup>1</sup> See Safety and Soundness Act, 12 U.S.C. 4513 and 4631-4641.

<sup>2</sup> *Id.*

<sup>3</sup> See 12 CFR part 1209.

<sup>4</sup> See 12 CFR part 1250.

Remedies Act (31 U.S.C. 3801 *et seq.*) on any person that makes a false claim for property, services or money from FHFA, or makes a false material statement to FHFA in connection with a claim, where the amount involved does not exceed \$150,000.<sup>5</sup>

## **II. The Adjustment Improvements Act**

The Federal Civil Penalties Inflation Adjustment Act of 1990 (“Inflation Adjustment Act”), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“Adjustment Improvements Act”), requires FHFA, as well as other Federal agencies with the authority to issue civil money penalties (CMPs), to adjust by regulation the maximum amount of each CMP authorized by law that the agency has jurisdiction to administer.<sup>6</sup> The Adjustment Improvements Act required agencies to make an initial “catch-up” adjustment of their CMPs upon the statute’s enactment, and further requires agencies to make additional adjustments on an annual basis following the initial adjustment.<sup>7</sup>

Annual inflation adjustments under the Adjustment Improvements Act are based on the percent change between the October Consumer Price Index for All Urban Consumers (the CPI-U) preceding the date of the adjustment and the October CPI-U for the year before that.

## **III. Description of the Rule**

This final rule adjusts the maximum penalty amount within each of the three tiers specified in 12 U.S.C. 4636 by amending the table contained in 12 CFR 1209.80 to reflect the new adjusted maximum penalty amount that FHFA may impose upon a

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<sup>5</sup> See generally, 31 U.S.C. 3801 *et seq.*

<sup>6</sup> See 28 U.S.C. 2461 note.

<sup>7</sup> FHFA promulgated its catch-up adjustment of its CMPs with an interim final rule published July 1, 2016. 81 FR 43028.

regulated entity or any entity-affiliated party within each tier. The increases in maximum penalty amounts contained in this final rule may not necessarily affect the amount of any CMP that FHFA may seek for a particular violation, which may not be the maximum that the law allows; FHFA would calculate each CMP on a case-by-case basis in light of a variety of factors.<sup>8</sup> This rule also adjusts the maximum penalty amounts for violations under the FHFA Flood Insurance regulation by amending the text of 12 CFR 1250.3 to reflect the new adjusted maximum penalty amount that FHFA may impose for violations under that regulation. This rule also adjusts the maximum amounts for civil money penalties under the Program Fraud Civil Remedies Act by amending the text of 12 CFR 1217.3 to reflect the new adjusted maximum penalty amount that FHFA may impose for violations under that regulation.

The Adjustment Improvements Act directs federal agencies to calculate each annual CMP adjustment as the percent change between the CPI-U for the previous October and the CPI-U for October of the calendar year before.<sup>9</sup> The maximum CMP amounts for FHFA penalties under 12 U.S.C. 4636 were last adjusted in 2016.<sup>10</sup> Since FHFA is making this round of adjustments in calendar year 2018, and the maximum CMP amounts were last set in calendar year 2016, the inflation adjustment amount for each maximum CMP amount was calculated by comparing the CPI-U for October 2015 with the CPI-U for October 2016, resulting in an inflation factor of 1.01636, and then comparing the CPI-U for October 2016 with the CPI-U for October 2017, resulting in an inflation factor of 1.02041. For each maximum CMP calculation, the product of this

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<sup>8</sup> See, e.g., 12 CFR 1209.7(c); FHFA Enforcement Policy, AB 2013-03 (May 31, 2013).

<sup>9</sup> This final rule will incorporate the annual inflation adjustments for 2017 and 2018 by performing the calculation for 2017, and applying the 2018 adjustment to that amount.

<sup>10</sup> See 81 FR 43028, 43030 (July 1, 2016).

inflation adjustment and the previous maximum penalty amount was then rounded to the nearest whole dollar as required by the Adjustment Improvements Act, to determine the new adjusted maximum penalty amount.<sup>11</sup> The table below sets out these items accordingly.

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	10,982	408	11,390
12 U.S.C. 4636(b)(2)	Second Tier	54,910	2037	56,947
12 U.S.C. 4636(b)(4)	Third Tier (Entity-affiliated party and Regulated entity)	2,196,380	81,495	2,277,875

Similarly, the CMP for FHFA penalties under the Program Fraud Civil Remedies Act were last adjusted in 2016.<sup>12</sup> Since FHFA is making this round of adjustments in calendar year 2018, and the maximum CMP amounts were last set in calendar year 2016, the inflation adjustment amount for each maximum CMP amount was calculated as above by comparing the CPI-U for October 2015 with the CPI-U for October 2016, resulting in an inflation factor of 1.01636, and then comparing the CPI-U for October 2016 with the CPI-U for October 2017, resulting in an inflation factor of 1.02041. The table below sets out these items accordingly.

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<sup>11</sup> 28 U.S.C. 2461 note.

<sup>12</sup> See 81 FR 43031, 43035 (July 1, 2016).

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
31 U.S.C. 3802(a)(1)	Maximum penalty per false claim	10,781	400	11,181
31 U.S.C. 3802(a)(2)	Maximum penalty per false statement	10,781	400	11,181

Similarly, the CMP for FHFA penalties under the Flood Insurance regulation were last adjusted in 2016.<sup>13</sup> Since FHFA is making this round of adjustments in calendar year 2018, and the maximum CMP amounts were last set in calendar year 2016, the inflation adjustment amount for each maximum CMP amount was calculated as above by comparing the CPI-U for October 2015 with the CPI-U for October 2016, resulting in an inflation factor of 1.01636, and then comparing the CPI-U for October 2016 with the CPI-U for October 2017, resulting in an inflation factor of 1.02041. The table below sets out these items accordingly.

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
42 U.S.C. 4012a(f)(5)	Maximum penalty per violation	534	20	554
42 U.S.C. 4012a(f)(5)	Maximum total penalties assessed against an Enterprise in a calendar year	154,028	5715	159,743

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<sup>13</sup> See 81 FR 43028, 43031 (July 1, 2016).

#### **IV. Differences between the Federal Home Loan Banks and the Enterprises**

When promulgating any regulation that may have future effect relating to the Banks, the Director is required by section 1313(f) of the Safety and Soundness Act to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability (12 U.S.C. 4513(f)).<sup>14</sup> The Director considered the differences between the Banks and the Enterprises, as they relate to the above factors, and determined that this final rule is appropriate, as the maximum civil money penalty amounts are set by statute, as is the manner in which FHFA is required to adjust those amounts, so there is no possibility to vary those provisions in this rule based on consideration of the factors recited in section 1313(f). The inflation adjustments effected by the final rule are mandated by law. Any imposition of civil money penalties would only take place after an enforcement action in which FHFA would have an opportunity to consider all relevant factors. The special features of the Banks identified in section 1313(f) of the Safety and Soundness Act can be accommodated, if appropriate, along with any other relevant factors, when determining any actual penalties.

#### **V. Regulatory Impact**

##### Administrative Procedure Act

FHFA finds good cause that notice and an opportunity to comment on this final rule are unnecessary under section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B). The Adjustment Improvements Act states that the annual civil money penalty adjustments shall be made notwithstanding the rulemaking provisions of 5

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<sup>14</sup> So in original; no paragraphs (d) and (e) were enacted. See 12 U.S.C.A. 4513 n 1.

U.S.C. 553. Furthermore, this rulemaking conforms with and is consistent with the statutory directive set forth in the Adjustment Improvements Act. As a result, there are no issues of policy discretion about which to seek public comment. Accordingly, FHFA is issuing these amendments as a final rule.

#### Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA),<sup>15</sup> an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities, unless the head of an agency certifies that the rule will not have “a significant economic impact on a substantial number of small entities.” However, the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to the APA.<sup>16</sup> As discussed above, FHFA has determined for good cause that the APA does not require a general notice of proposed rulemaking for this rule. Thus, the RFA does not apply to this final rule.

#### Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). This rule contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review.

#### Congressional Review Act

FHFA has determined that this regulatory action does not qualify as either a “rule” or a “major rule” under the Congressional Review Act. *See* 5 U.S.C. 804(2), (3).

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<sup>15</sup> 5 U.S.C. 603.

<sup>16</sup> 5 U.S.C. 603(a), 604(a).



## **List of Subjects**

### 12 CFR Part 1209

Administrative practice and procedure, Penalties.

### 12 CFR Part 1217

Civil remedies, Program fraud.

### 12 CFR Part 1250

Flood insurance, Government-sponsored enterprises, Penalties, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the **Supplementary Information** and under the authority of 12 U.S.C. 4513b and 12 U.S.C. 4526, the Federal Housing Finance Agency hereby amends subchapters A and C of chapter XII of Title 12 of the Code of Federal Regulations as follows:

## **SUBCHAPTER A—ORGANIZATION AND OPERATIONS**

### **PART 1209 —RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for part 1209 continues to read as follows:

**Authority:** 5 U.S.C. 554, 556, 557, and 701 *et seq.*; 12 U.S.C. 1430c(d); 12 U.S.C. 4501, 4502, 4503, 4511, 4513, 4513b, 4517, 4526, 4566(c)(1) and (c)(7), 4581-4588, 4631-4641; and 28 U.S.C. 2461 note.

2. Revise § 1209.80 to read as follows:

#### **§ 1209.80 Inflation adjustments.**

The maximum amount of each civil money penalty within FHFA's jurisdiction, as set by the Safety and Soundness Act and thereafter adjusted in accordance with the Inflation Adjustment Act, is as follows:

<b>U.S. Code citation</b>	<b>Description</b>	<b>New adjusted maximum penalty amount</b>
12 U.S.C. 4636(b)(1)	First Tier	\$11,390
12 U.S.C. 4636(b)(2)	Second Tier	\$56,947
12 U.S.C. 4636(b)(4)	Third Tier (Regulated Entity or Entity-Affiliated party)	\$2,277,875

3. Revise § 1209.81 to read as follows:

**§ 1209.81 Applicability.**

The inflation adjustments set out in § 1209.80 shall apply to civil money penalties assessed in accordance with the provisions of the Safety and Soundness Act, 12 U.S.C. 4636, and subparts B and C of this part, for violations occurring after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**PART 1217—PROGRAM FRAUD CIVIL REMEDIES ACT**

4. The authority citation for part 1217 continues to read as follows:

**Authority:** 12 U.S.C. 4501; 12 U.S.C. 4526; 28 U.S.C. 2461 note; 31 U.S.C. 3801-3812.

5. Amend § 1217.3 by revising paragraphs (a)(1) introductory text and (b)(1) introductory text to read as follows:

**§1217.3 Basis for civil penalties and assessments.**

(a) \* \* \* (1) A civil penalty of not more than \$11,181 may be imposed upon a person who makes a claim to FHFA for property, services, or money where the person knows or has reason to know that the claim:

\* \* \* \* \*

(b) \* \* \* (1) A civil penalty of up to \$11,181 may be imposed upon a person who makes a written statement to FHFA with respect to a claim, contract, bid or proposal for a contract, or benefit from FHFA that:

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## **SUBCHAPTER C—ENTERPRISES**

### **PART 1250 —FLOOD INSURANCE**

6 The authority citation for part 1250 continues to read as follows:

**Authority:** 12 U.S.C. 4521(a)(4) and 4526; 28 U.S.C. 2461 note; 42 U.S.C. 4001 note; 42 U.S.C. 4012a(f)(3), (4), (5), (8), (9), and (10).

7. Amend § 1250.3 by revising paragraph (c) to read as follows:

#### **§ 1250.3 Civil money penalties.**

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(c) Amount. The maximum civil money penalty amount is \$534 for each violation that occurs before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], with total penalties not to exceed \$154,028. For violations that occur on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the civil money penalty under this section may not exceed \$554 for each violation, with total penalties assessed under this section against an Enterprise during any calendar year not to exceed \$159,743.

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Dated: August 15, 2018

Melvin L. Watt,  
*Director, Federal Housing Finance Agency.*  
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